

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MACEDONIO LUNA)	
Claimant)	
VS.)	
)	Docket Nos. 202,235 & 205,193
KAN-TEX FEEDERS)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed from the March 3, 1998, Order entered by Administrative Law Judge David A. Shufelt.

APPEARANCES

Claimant appeared by and through his attorney, Thomas R. Fields of Kansas City, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Terry J. Malone of Dodge City, Kansas. There were no other appearances.

RECORD

The record consists of a transcript of proceedings held before Administrative Law Judge David A. Shufelt in Garden City, Finney County, Kansas, on the 3rd day of March, 1998.

ISSUES

Claimant alleges the Administrative Law Judge exceeded his jurisdiction in denying Claimant's Second Motion to Complete Cross-Examination of Jim Harding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant's Second Motion to Complete Cross-Examination of Jim Harding, respondent's witness, came before Administrative Law Judge David A. Shufelt on March 3, 1998. Claimant's terminal date expired on December 15, 1997, but Administrative Law Judge Kenneth S. Johnson extended the terminal date to February 25, 1998, for claimant to complete his cross-examination of Jim Harding. Claimant did not complete the cross-examination and on February 27, 1998, filed this second motion. Although not specifically labeled, the Appeals Board finds this motion is essentially requesting an extension of claimant's terminal date. The Administrative Law Judge denied the request and determined the case submitted for decision.

Claimant appealed and argues his terminal date for submission of evidence has to be extended to allow him additional time to complete the cross-examination of respondent's witness, Jim Harding. Claimant asserts Mr. Harding's credibility is critical to the outcome of this case and claimant has not had an opportunity to complete an effective cross-examination of Mr. Harding.

Respondent, on the other hand, asserts the Appeals Board does not have jurisdiction at this juncture of the proceeding to review the Administrative Law Judge's March 3, 1998, Order.

The Appeals Board finds, before it discusses the merits of this appeal, it must first address the issue of whether it has jurisdiction to review the Administrative Law Judge's March 3, 1998, Order.

This is not an appeal from an order entered pursuant to the preliminary hearing statute found at K.S.A. 1997 Supp. 44-534a. An appeal from the preliminary hearing statute either must allege the Administrative Law Judge exceeded his or her jurisdiction or one of the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a, must be raised. This appeal is the result of a hearing held prior to a final award on a motion filed by the claimant to extend his terminal date. For the Appeals Board to have jurisdiction at this juncture of the proceeding to review this order, the appeal would have to be brought pursuant to K.S.A. 1997 Supp. 44-551(b)(1).

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the review of the Appeals Board from "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll final orders, awards, modifications of awards, or preliminary hearing awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."

The Appeals Board finds and has ruled on other occasions that the Order entered by Administrative Law Judge David Shufelt on March 3, 1998, is not a final order, award, modification of award or a preliminary hearing award as contemplated by K.S.A. 1997 Supp. 44-551(b)(1). See Urquidi v. Trinity Manor Adult Care Home, Docket No. 186,568 (October 1997). The Appeals Board concludes the order that is the subject of this appeal is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has authority to make during the trial process, and the Appeals Board lacks jurisdiction to review such order until it is contained in a final order or award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that respondent's appeal from the Order entered by Administrative Law Judge David A. Shufelt dated March 3, 1998, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas R. Fields, Kansas City, KS
Terry J. Malone, Dodge City, KS
David A. Shufelt, Assistant Director
Administrative Law Judge, Garden City, KS
Philip S. Harness, Director